

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DAVID GRENKE, individually,  
and on behalf of all others  
similarly situated,

Plaintiff,

HONORABLE GEORGE CARAM STEEH

v.

No. 12-14221

HEARST COMMUNICATIONS, INC., a  
Delaware Corporation,

Defendant.

MOTION HEARING

Monday, December 8, 2014

- - -

APPEARANCES:

For the Plaintiff:

ARI J. SCHARG, ESQ.

For the Defendant:

JONATHAN R. DONNELLAN, ESQ.

- - -

*To Obtain Certified Transcript, Contact:*  
*Ronald A. DiBartolomeo, Official Court Reporter*  
*Theodore Levin United States Courthouse*  
*231 West Lafayette Boulevard, Room 238*  
*Detroit, Michigan 48226*  
*(313) 962-1234*

*Proceedings recorded by mechanical stenography.*  
*Transcript produced by computer-aided transcription.*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

	<u>Page</u>
Motion hearing	4

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

E X H B I T S

<u>Identification</u>	<u>Offered</u>	<u>Received</u>
-----------------------	----------------	-----------------

N O N E

Detroit, Michigan

Monday, December 8, 2014

- - -

**THE CLERK:** Case Number 12-14221, David  
Grenke versus Hearst Communications.

**THE COURT:** Good morning.

**MR. DONNELLAN:** Good morning.

**MR. SCHARG:** Good morning.

**THE COURT:** Would you like to state your  
appearances?

**MR. SCHARG:** Ari Scharg on behalf of the  
plaintiff.

**THE COURT:** Okay.

**MR. SUMMERFIELD:** Brian Summerfield on behalf  
of the plaintiff.

**THE COURT:** Okay. Welcome.

**MR. DONNELLAN:** Jonathan Donnellan on behalf  
of the defendant.

**MS. FINDIKYAN:** Kristina Findikyan on behalf  
of the defendant.

**MR. YUHAN:** Stephen Yuhon, also on behalf of  
the defendant.

**MR. MOORE:** Brian Moore from Dykema on behalf  
of the defendant.

*12-14221; DAVID GRENKE v. HEARST COMMUNICATIONS, INC.*

1                   **THE COURT:** Okay. Welcome. You can all take  
2 a seat. We'll hear first from the defendants since this  
3 is your motion.

4                   **MR. DONNELLAN:** Good morning, your Honor.

5                   We're here today on Hearst's motion to stay  
6 discovery pending hearing and decision on its motion to  
7 dismiss for lack of subject matter jurisdiction, and that  
8 motion, the motion to dismiss, is based on plaintiff's  
9 lack of standing to bring a claim under the Michigan VRPA.

10                  The law in this area is quite clear. The burden  
11 to establish subject matter jurisdiction is entirely on  
12 plaintiff. That's the plaintiff's burden and plaintiff's  
13 burdens alone. From the very outset it goes back to the  
14 duty to investigate before the complaint is filed, and  
15 when there is a factual challenge to jurisdiction,  
16 plaintiff cannot rest on the pleadings, nor is he entitled  
17 to jurisdictional discovery unless he can first  
18 demonstrate through probative evidence that there is a  
19 factual basis for his claim of jurisdiction, and only then  
20 would jurisdictional discovery be warranted if there was  
21 some sort of a dispute between the two versions of facts  
22 that were provided.

23                  Now the fundamental premise of this suit and the  
24 plaintiff's alleged injury giving him standing  
25 consistently from the start has been Mr. Grenke's alleged

1 subscription to Country Living Magazine, and Hearst's  
2 alleged disclosure of his personal reading information,  
3 specifically his name, address and the title of the  
4 magazine. That was the basis for the complaint where it's  
5 spelled out clearly that he was a Country Living  
6 subscriber. It was filed back in September of 2012, and  
7 the complaint contains more than 50 references to  
8 subscriber and subscription information. That was the  
9 basis for plaintiff's argument in opposition to Hearst's  
10 motion to dismiss the complaint under 12(b)(6) for lack of  
11 standing, and that was the basis for this Court's ruling  
12 on that motion accepting the allegations to be true, and  
13 finding them to be sufficient at that stage of lawsuit.

14 That was also the basis for plaintiff's discovery  
15 requests of the defendants, seeking documents and  
16 information about his subscriptions, and the contention he  
17 made in this initial disclosures where he stated that he  
18 possessed details about the subscriptions and subscription  
19 documents, specifically credit cards and bank statements,  
20 which contained charges associated with his subscriptions  
21 to Country Living and Good Housekeeping magazines.

22 We now know that that fundamental premise for the  
23 lawsuit is false. The documents don't exist. Plaintiff's  
24 counsel admitted that during the teleconference, which was  
25 a meet and confer before we filed the instant motions, and

1 they were not produced in response to our document  
2 requests, nor were they submitted in response to the  
3 present motion.

4 What plaintiff's discovery responses did confirm  
5 however, is that he was never a Country Living subscriber.  
6 All his claims and allegations and arguments over the  
7 years that he was a Country Living subscriber have been  
8 false. Having abandon his claim to be a Country Living  
9 subscriber, there is no probative evidence demonstrating  
10 that he has standing. The only evidence that he has put  
11 forward now where he claims to be evidence -- and we take  
12 issue with that -- is that he was a purchaser for somebody  
13 else in 2003. That doesn't meet his burden, but be that  
14 as it may, if that is his argument, that's fine. If  
15 that's his evidence, that's fine. We will respond on the  
16 motion to dismiss, and I think that we will be able to  
17 satisfy the Court that that does not create standing here,  
18 but for purposes of this motion, it's certainly raises no  
19 factual dispute with respect to the question of  
20 jurisdiction that would necessitate discovery on that  
21 issue.

22 Plaintiff is not entitled specifically to  
23 discovery about matters that are not alleged in the  
24 complaint, particularly about person who are not parties.

25 Mr. Scharg, during our meet and confer, was very

1 interested in probing whether or not nonparty Rose Grenke,  
2 the plaintiff's wife, might be a subscriber, and seeking  
3 out information about that, and seeking information about  
4 other possible basis for other claims or for other parties  
5 that might be substituted in into the suit or brought into  
6 the suit. That's entirely inappropriate under Rule 26,  
7 and under this circuit's very clear law that you may not  
8 take discovery in aid of bringing on new claims, and  
9 surviving a motion where you're allegations are clearly  
10 sufficient, and in this case they have essentially been  
11 conceived on a factual attack to be insufficient.

12 Now based on plaintiff's response and his position  
13 to date, I expect that he'll try to shift a lot of the  
14 burden and the blame that belongs entirely to his client  
15 back onto Hearst, and so I would like to reserve  
16 sufficient time to reply to those arguments, but at this  
17 point I would simply like to end by stressing that the  
18 plaintiff is the one with the burden here; that these  
19 facts were completely within his possession custody or  
20 control. He had an obligation to investigate at the  
21 outset, and had ample time to do so, and he has produced  
22 nothing. Discovery won't aid him now.

23 **THE COURT:** All right. Thank you, sir.

24 Mr. Scharg, first of all, are you abandoning the  
25 claim made in the complaint that your client was a



1 subscriber?

2 **MR. SCHARG:** No. It's funny that counsel  
3 brings up Rule 26.

4 **THE COURT:** Has your client been deposed?

5 **MR. SCHARG:** No. Before his deposition it  
6 was canceled by the defendant.

7 It's funny that they bring up Rule 26 though. On  
8 August 8, 2014, they served their Rule 26(a)(1)  
9 disclosures and said expressly that they have documents  
10 that -- they have relevant documents to the case, and  
11 those documents are plaintiff's subscription records.  
12 They have plaintiff's subscription records in their  
13 possession. What happened to them, and I would like to  
14 give the Court kind of a background of how we got to this  
15 point.

16 Counsel for Hearst has been playing games and  
17 acting in bad faith for the last four or five months.  
18 After requesting multiple extensions on discovery and  
19 stays, finally on May 19th, the discovery stay was lifted.  
20 At that time Hearst asked for an additional two months to  
21 respond to the interrogatories and request to produce.  
22 That brought their new deadline to July 23rd.

23 On July 21th, pursuant to the Court's order --

24 **THE COURT:** I'm sorry. What was the previous  
25 date?

1                   **MR. SCHARG:** It was moved from May 19th to  
2 give an extension to July 23rd.

3                   **THE COURT:** No. I mean, what stay order was  
4 in place?

5                   **MR. SCHARG:** There was a stay that was  
6 entered in place while the parties went to mediation to  
7 try and resolve the claims.

8                   **THE COURT:** All right. So that was by  
9 voluntary agreement?

10                   **MR. SCHARG:** Yes. On July 21st, pursuant to  
11 the Court's order, we held a second 26(f) conference.  
12 During that 26(f) conference, as we did during the first  
13 26(f) conference in January of 2013, we talked about the  
14 claims and defenses again. As I understood it, Hearst's  
15 primary defense was that they gave notice to the plaintiff  
16 and therefore, they have an affirmative defense of notice.

17                   Never once did they mention back in 2012, 2013 or  
18 2014 that the plaintiff was not subscriber. To the  
19 contrary, everything that's happening to the case has  
20 suggested that he is a subscriber.

21                   In Hearst's answer in affirmative defenses, they  
22 raise an affirmative defense of notice. It said we gave  
23 him notice, and therefore, the claim fits. They averred  
24 under Rule 11 that they gave the plaintiff notice. They  
25 also averred under Rule 11 that Mr. Grenke consented to

1 the disclosures at issue; that they obtained his written  
2 consent. Those are affirmative representations that were  
3 made.

4 Now in their papers, Hearst has gone after us a  
5 little bit saying, but we also said that he -- we denied  
6 the allegations that he is a subscriber, but that didn't  
7 mean anything in 2014 because his subscription lapsed by  
8 that point. When the complaint was filed, that  
9 subscription was true. When it was denied in 2014, there  
10 was no reason to ask a question, was he a subscriber,  
11 because his subscription lapsed and they raised these  
12 affirmative defenses that clearly showed you the  
13 subscriber.

14 Regardless after the 26(f) conference July 23rd, I  
15 received boilerplate blanket objections to every single  
16 interrogatory in request to produce. No documents,  
17 nothing. No relevant information. At that point for the  
18 first time they said, we're not going to produce until  
19 there is a protective order in place.

20 So the very next day on July 24th, I sent them a  
21 protective order. I sent them multiple emails, several  
22 telephone calls, all of which were ignored until  
23 August 29th when they finally sent me an email saying,  
24 okay. This protective order is okay. It was submitted to  
25 the Court and entered within a day.

1           So then the next question is so when are we going  
2           to get document information? I was promised they were  
3           going to be sent the next week. When they weren't, we  
4           held another meet and confer conference on September 11th.

5           **THE COURT:** Okay. I got a flavor of the  
6           history. Do you agree that if your client was not a  
7           subscriber, and that only subscription information was  
8           sold by the defendant or conveyed to third parties, that  
9           you would lack standing, and therefore, the Court would  
10          lack subject matter jurisdiction?

11          **MR. SCHARG:** No.

12          **THE COURT:** No? So even if he was never a  
13          subscriber, would still have standing?

14          **MR. SCHARG:** Well, the Michigan VRPA doesn't  
15          say anything about subscribers. It says any customer that  
16          purchases the written materials has standing.

17          Now we submitted a declaration --

18          **THE COURT:** Do you have any evidence that  
19          your client purchased?

20          **MR. SCHARG:** Yes.

21          **THE COURT:** What?

22          **MR. SCHARG:** We submitted a declaration  
23          saying that he sent Hearst a check with his name on it  
24          multiple times since 2003 when he's renewed the  
25          subscription every single year.

1           Now here's the big question, whose name is the  
2           subscription in? Mr. Grenke is in his mid-70's. He lives  
3           with his wife Rose. They've lived together for 25 years  
4           in the same place. There's no question here that one of  
5           them has standing to bring the claim, and they potentially  
6           have standing to bring the claim if they're both  
7           subscribers or both customers.

8           I mean, I would contend that a subscriber can be a  
9           customer, but a customer does not necessarily have to be a  
10          subscriber. Regardless, their information is being  
11          disclosed. They have already confirmed to at least 37  
12          different companies, including Data Minors.

13          This is not the case where somebody is trying to  
14          lead the Court astray, and trying to pull the wool over  
15          the Court's eyes. One of them has standing, and it's  
16          absurd that if Mr. Grenke was not actually a subscriber, a  
17          customer of record, they would wait two and a half years  
18          to say something. I find that hard to believe.

19          The day before the 30(b)(6) deposition, it was  
20          canceled by the defendant in favor of just submitting  
21          these very limited declarations to the Court, and the fact  
22          that we're even talking about evidence and declarations,  
23          the binders full of documents and evidence on counsel's  
24          table, shows that there's an issue over the facts here,  
25          and the Sixth Circuit has said very clearly that when an

1 attack on subject matter implicates an element of the  
2 cause of action, then the district court should, quote,  
3 find that jurisdiction exists, and deal with the objection  
4 as a direct attack on the merits that the plaintiff claims  
5 under Rule 56.

6 The reason for that is clear. The Sixth Circuit  
7 explained that the rule exists to protect the plaintiff  
8 who's essentially it's facing a challenge to the validity  
9 of his claim.

10 Now if the defendants were able to challenge  
11 subject matter jurisdiction at any point in the case, then  
12 there would never be a decision on the merits of the case.  
13 It's -- this is an untimely attack, and the Sixth Circuit  
14 I've cited --

15 **THE COURT:** I'm sorry, but an attack on  
16 subject matter jurisdiction is never untimely. It could  
17 be mounted well after a judgment is entered in the case.  
18 That's why we have to get it straight.

19 **MR. SCHARG:** That's true, and that's why I  
20 would like take discovery on this issue. I mean, this is  
21 an instance where whether Mr. Grenke has standing under  
22 the VRPA. All that evidence is with Hearst. They can  
23 very well challenge that his information was never not  
24 disclosed to any third parties. Okay. That's still a  
25 challenge to VRPA claim, which eventually goes to his

1 standing to bring the claim to federal court.

2 **THE COURT:** I got it. Thanks.

3 **MR. SCHARG:** Thank you very much.

4 **THE COURT:** I'll give you a couple minutes.

5 **MR. SCHARG:** Can I make one last point?

6 **THE COURT:** Sure.

7 **MR. SCHARG:** To the extent that it was Rose  
8 Grenke that's in their system instead of David, she's our  
9 client as well, and we will be happy to substitute her  
10 into the case.

11 **THE COURT:** Okay. Thanks. I got that  
12 impression. Okay.

13 So what do you know about Rose Grenke?

14 **MR. DONNELLAN:** Well, your Honor, with all  
15 due respect it's completely irrelevant because --

16 **THE COURT:** Well, it will be very quickly  
17 relevant when he asks to amend the complaint.

18 **MR. DONNELLAN:** Well, your Honor, we cite  
19 cases actually in our motion to dismiss on this point,  
20 which is, if this Court lacks subject matter jurisdiction  
21 because David Grenke does not have standing, the Court  
22 does not have the power to substitute in another  
23 plaintiff, and so that is something that I told Mr. Scharg  
24 during our meet and confer before we filed this motion  
25 when he specifically said that he wanted to -- he knew

1 this was a possibility, and he wanted to get it right, and  
2 he wanted to substitute her in if possible and start  
3 asking about information it.

4 This isn't the first time Mr. Scharg and his firm  
5 has sued Hearst magazines under a creative theory of a  
6 state law statute that's been untested, and in the  
7 previous case he lost, and I'm sure it won't be the last  
8 case. I have an obligation to my client not to open up  
9 ourselves to unnecessary and unwarranted discovery, which  
10 in this case he has not shown that his client is entitled  
11 to, and Rose Grenke as a nonparty is not entitled to  
12 discovery, and his lawyer is not entitled to take pre-suit  
13 discovery on behalf of that client who is not a party in  
14 this case, and the Court would be powerless to make that  
15 substitution unless he can satisfy you first that  
16 Mr. Grenke has standing here, something that we will  
17 establish that he cannot do, and something that the  
18 evidence that he has put in so far does not create any  
19 issue of fact with respect to the evidence that we put in.  
20 That's way the motion to stay should be --

21 **THE COURT:** Let me interrupt if I may. I'm  
22 sorry. I have a naturalization ceremony that I am suppose  
23 to get down to.

24 Assume that Mrs. Grenke is a subscriber, that  
25 Mr. Grenke wrote the check for the -- back in 2003, and



1 currently doesn't have checking records to support, but  
2 could credibly assert that he was the check writer during  
3 that period, and he wrote the check for the magazine.  
4 Would that confer standing?

5 **MR. DONNELLAN:** Confer standing on whom?

6 **THE COURT:** Mr. Grenke as a purchaser.

7 **MR. DONNELLAN:** I don't believe it would,  
8 your Honor, because you still in order to have a  
9 violation, and plaintiff counsel has said this numerous  
10 times, and it's part of your Honor's order in this case,  
11 is that you have to have a disclosure, and the affidavit  
12 of Charlie Swift establishes that unless you are the  
13 subscriber or unless you are a gift donor, a formal --  
14 purchasing a subscription as a gift for somebody else,  
15 your name will not be in the data base that might lead to  
16 disclosure.

17 The Swift declaration is unequivocal that  
18 Mr. Grenke is not in there as a Country Living purchaser  
19 or subscriber, and that his name was not disclosed, and  
20 that is un rebutted testimony, and we'll address that again  
21 in our reply in our motion to dismiss.

22 For purposes of this motion, he has raised no  
23 factual issue with respect to that testimony. That's why  
24 we say, even given whatever evidence he's put in, that's  
25 fine. We'll address that. We don't think that it suffice

1 us to establish standing. It certainly doesn't create any  
2 sort of dispute -- any genuine dispute as to  
3 jurisdictional fact warranting discovery.

4 If I could bring up a couple of other items, your  
5 Honor, counsel stood up, and he made the claim that  
6 Mr. Grenke wrote checks multiple times over a number of  
7 different years. That is not what Mr. Grenke said in his  
8 declaration. He said one time, 2003. That's specifically  
9 what he testifies to. If you look at the Declaration  
10 Paragraphs 5 and 6, there's virtually no factual content  
11 in that declaration, but he certainly didn't say that he  
12 wrote multiple checks over multiple years.

13 With respect to the Gentek case, again, we will  
14 address that in our reply on the substantive motion to  
15 dismiss. That is completely in opposite and inapplicable.  
16 That case and the other cases make clear that it only  
17 applies where there is federal question subject matter  
18 jurisdiction dealing with the federal statute. Otherwise  
19 there is no interest in the district court continuing onto  
20 bring about some sort of a definitive resolution of a  
21 state law question.

22 And finally, as to the process, I think your Honor  
23 got this point certainly very clearly in respect that this  
24 is an issue that has to be addressed whenever it is  
25 brought up, but also it's very important that there was a

1 process leading up to this motion, and that Hearst has met  
2 all of its obligations under this case. All of its  
3 pleading have been entirely accurate. He raises questions  
4 about an affirmative defense in the answer. In the answer  
5 though, it specifically, unequivocally denied that  
6 Mr. Grenke was the purchaser -- I'm sorry -- was the  
7 subscriber.

8 With respect to the coming to the point of filing  
9 this motion, that required plaintiff to clarify his own  
10 discovery requests so that we could conclude that a New  
11 York base purchaser from 15 years might not have been the  
12 plaintiff, and so that we can satisfy ourselves that he  
13 didn't have other evidence that he said in his Rule 26  
14 disclosures that he had, and he still has not amended  
15 those Rule 26 disclosures.

16 We have amended ours to make perfectly clear that  
17 we were talking about Country Living subscription records  
18 generally based on the allegations in the complaint, but  
19 it wasn't until his interrogatory responses that we were  
20 in the position to file this motion your Honor, and that's  
21 when it was clear that he had been a Michigan resident for  
22 30 years, and could respond that he was unclear. He  
23 didn't know if he was a subscriber during the meet and  
24 confer before this motion was filed when his counsel said  
25 that his client wasn't sure if he was a subscriber, and he

1 was not sure if he was a purchaser. So the declaration  
2 that he puts in now is in conflict with that statement  
3 that he made to us during the meet and confer call.

4 All of this, your Honor, I would submit is an  
5 inappropriate basis for a granting of discovery to conduct  
6 essentially a fishing expedition for what he says he wants  
7 to file a claim on behalf of another party, a nonparty, or  
8 to see if there is anything out there. He has not done  
9 anything to support his entitlement to that discovery, and  
10 we would respectfully ask your Court to grant our motion.

11 **THE COURT:** Okay. Thank you.

12 **MR. DONNELLAN:** Thank you.

13 **THE COURT:** There are certainly significant  
14 challenges made to the plaintiff's standing to maintain  
15 his suit. However, the Court finds essentially that the  
16 plaintiff is entitled to test the assertion by the  
17 defendant that Mr. Grenke lacks standing under  
18 circumstances where he may be in a position to demonstrate  
19 that his wife and he affected a joint purchase, where the  
20 subscriber information basically is shared between them,  
21 and is ultimately demonstrated to be disclosed to third  
22 party.

23 I think basically the history of the case as  
24 recited by both counsel would conclude that the Court is  
25 unable to find that based upon the information adduced so

1 far, that Mr. Grenke has been demonstrated to lack  
2 standing altogether, and that plaintiff should have the  
3 opportunity to explore that limited issue.

4 So the Court is going to grant in part and deny in  
5 part defendant's motion to stay discovery, allowing  
6 discovery that goes directly to the question of standing,  
7 and I will stay all other discovery in the case.

8 I'm going to-- I'll put out a written decision on  
9 this point.

10 I just would like to observe, if I'm faced with a  
11 motion to amend by adding the wife to the case, and even  
12 if the defendant is entitled to a dismissal of the case,  
13 in all likelihood given the nature of the claims and the  
14 possible scenario as it relates to standing here, that  
15 dismissal would end up being without prejudice, and the  
16 amendment advanced by the defendant may well be  
17 permissible under those circumstances to cure the  
18 deficiency asserted by the defendant, but those are among  
19 many issues that would be considered by the Court at a  
20 later point.

21 Right now the Court will allow the plaintiff to  
22 test the sufficiency of the claims made in this motion in  
23 the motion to dismiss with discovery limited to that basic  
24 question, and we'll see where it goes from there.

25 **MR. SCHARG:** One housekeeping issue.

1                   **THE COURT:** Yes.

2                   **MR. SCHARG:** We have a discovery closure date  
3 of January 9th I believe.

4                   **THE COURT:** Discovery closure date?

5                   **MR. SCHARG:** Yes. I guess we can confer and  
6 submit to the Court a revised schedule if that works for  
7 the Court.

8                   **THE COURT:** That's fine with me.

9                   **MR. SCHARG:** Thank you.

10                  **MR. DONNELLAN:** Your Honor, if I may.

11                  **THE COURT:** Yes.

12                  **MR. DONNELLAN:** Just with respect to the  
13 scope of discovery, I would ask that it be limited to  
14 Country Living Magazine because that is the only magazine  
15 that he was alleged to be a subscriber to in the  
16 complaint, and if there are any other details that the  
17 Court could provide us with in terms of the scope of  
18 discovery permitted, that would be helpful in order to  
19 avoid burdening the Court with any further questions about  
20 it.

21                  The other thing is a scheduling matter, and I  
22 agree with my adversary. I think we can work out a  
23 schedule here, but we would like to put off obviously the  
24 time for us to reply on the motion to dismiss because I  
25 assume they are going to want put in some supplemental

1 response that we would reply to after the discovery is  
2 provided, and the witness who I think would probably be  
3 the most relevant witness here -- and I would ask that  
4 discovery be limited to his deposition -- Mr. Swift, to  
5 see it they can establish anything based on testing his  
6 declaration. He is going to be in Australia and will be  
7 unavailable for a period of time where I think the  
8 earliest that we can do that deposition would be in  
9 probably mid-January.

10 **THE COURT:** Okay. Well, with respect to that  
11 first question, why shouldn't it be limited to Country  
12 Living? That's the only thing that you've alleged, Mr.  
13 Scharg.

14 **MR. SCHARG:** In Mr. Grenke's declarations, he  
15 also indicated that he had a subscription to Good  
16 Housekeeping. I suggest it be limited to those two  
17 magazines. I think that's a fair compromise.

18 With respect to the Swift declaration, we've had  
19 no chance to understand who is in charge of what. All  
20 we've gotten was an untested declaration of a search of a  
21 very narrow limited data base.

22 Why don't I send them a 30(b)(6) deposition  
23 notice? We can talk about the topics, and perhaps  
24 Mr. Swift is the person that would testify to all of it,  
25 but I'm not going to limit my discovery just to the search

1 of a very narrow data base within Hearst infrastructure.  
2 It is conceivable that there are several data bases that  
3 Mr. Grenke's information might be located in.

4 **MR. DONNELLAN:** Your Honor, respectfully  
5 Mr. Swift's declaration is pretty clear on this. He's the  
6 vice-president in charge of this entire area, and  
7 testified to all of Hearst magazine records.

8 **THE COURT:** He will be available after --

9 **MR. DONNELLAN:** He will be available after  
10 the beginning of the year. Perhaps that would be the  
11 place to start restricted to Mr. Grenke's records to  
12 Country Living Magazine, and then if Mr. Scharg wants to  
13 seek additional discovery, then he can do so at that  
14 point, but to open ourselves up to a 30(b)(6), generally I  
15 think is unproductive. His last 30(b)(6) had 11 topics.  
16 He said in his response papers that he wanted to take that  
17 as a starting point and augment it with other topics. I  
18 just think that would be unproductive, and we would wind  
19 up in front of the Court quickly.

20 **THE COURT:** Sounds like Mr. -- what his  
21 name?

22 **MR. DONNELLAN:** Mr. Swift.

23 **THE COURT:** -- Mr. Swift has the position  
24 that would enable him to offer what needs to be offered on  
25 the question of standing.



1                   **MR. SCHARG:** I agree on that. I just don't  
2 want to be limited to his actual statements in his  
3 declaration. That's all I'm saying.

4                   **THE COURT:** Right. Okay. Anything that  
5 relates to standing.

6                   **MR. SCHARG:** Thank you.

7                   **THE COURT:** If the complaint does not refer  
8 to the second magazine, then I think you're limited to the  
9 first.

10                  **MR. SCHARG:** That's fine.

11                  **MR. DONNELLAN:** I'm sorry, your Honor. Final  
12 question. Will he be permitted to inquire as to Rose  
13 Grenke?

14                  **THE COURT:** Yeah, I think so. As I said, I  
15 think one of the potential conclusions here is that they  
16 function jointly to purchase and subscribe, and that would  
17 also have some bearing on the Court whether the Court  
18 concludes that the case should be dismissed with or  
19 without prejudice. I would say that is -- you might as  
20 well find out what the facts are here that would determine  
21 standing, and I'm not convinced as of yet that there isn't  
22 a scenario that would allow Mr. Grenke to stay in the  
23 case.

24                  **MR. SCHARG:** Thank you.

25                  **MR. DONNELLAN:** Thank you, your Honor.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**THE COURT:** All right.

(Proceedings concluded.)

- - -

C E R T I F I C A T I O N

I, Ronald A. DiBartolomeo, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

\_\_\_\_\_  
Ronald A. DiBartolomeo, CSR  
Official Court Reporter

\_\_\_\_\_  
Date

- - -